FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 76 OF 2003
IN
MISC. CIVIL APPLICATION NO. 3511 OF 2000

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	Coram, : Court's or Judge's Orders

Ms. Shah i/b S.I. Shah & Co. for appellant

Mr. S.N. Pillai for respondents 3,4, 6 to 8

CORAM: SMT. RANJANA DESAI &
SMT. V.K.TAHILRAMANI,JJ.
4/9/2006

P.C.:-

In this Letters Patent Appeal order dated 2/8/02 passed by the learned Single Judge in Writ Petition No. 3511 of 2000, is challenged. It appears that on 2/8/2000 Rule was issued on the petition. Rule was issued on interim notice. Mr. Pillai waived service on behalf of all the 21 respondents and prayed for time to file affidavit.

On 24/7/01 the petition appeared on the board of learned Single Judge.

A conditional order came to be passed on that day. The petitioner was asked to serve all the unserved respondents within four weeks from 24/7/01, failing which the petition was to stand dismissed automatically against the unserved respondents without reference to the court.

The learned counsel for the appellant states that though Mr. Pillai stated that he is appearing for all the respondents on 2/8/2000, he filed vakalatnama only for respondents 3 to 8. According to the appellant all the unserved respondents were served by the appellant's advocate. That is to say respondent 1, respondents 9 to 21 were served by appellant's advocate's notice. However, it appears that on 7/5/02, the writ petition was dismissed against respondents 1,2 and 9 to 21 by the order of the Registrar of this court obviously pursuant to the learned Single Judge's order dated 24/7/2001.

On 2/8/2002 when the matter appeared before the learned Single Judge for consideration of interim relief, the learned Single Judge observed that respondents 2 and 14 have been granted reinstatement with backwages. Interim stay is sought of that order. Therefore, respondents 2 and 14 are necessary parties. In their absence the petition may not be maintainable. In the circumstances the Rule on interim relief was discharged. This order is challenged in this Letters Patent Appeal.

Ms. Shah, learned counsel appearing for the appellant strenuously contended that in fact respondents 2 and 14 were served by the appellant’s advocate’s notice. So far as respondent 5 is concerned he is dead. The learned counsel contended that the fact that Mr. Pillai had waived service on behalf of all the respondents ought to have been considered by the learned Single Judge and the prayer for interim relief could not have been rejected on the

ground that respondents 2 and 14 were not served because in any event respondents 2 and 14 were served by the appellant's advocate's notice. She submitted that it is necessary, therefore, to set aside the impugned order and consider the prayer for interim relief afresh.

Whether the present Letters Patent Appeal is maintainable or not is a debatable question. However, it is not necessary for us to go into that question because assuming it is maintainable considering the fact that the order impugned in the writ petition is dated 6/10/99 and that the order impugned in the Letters Patent Appeal is dated 2nd August, 2002, we are not inclined to admit the present Letters Patent Appeal in view of the considerable passage of time.

Mr. Pillai, learned counsel for the respondents 3,4,6,7,8 states that he will consent to an early hearing of the writ petition. Parties may, if they are so advised, approach the

learned Single Judge for fixing early date of hearing. Needless to say that the appellant will be at liberty to pray for interim relief in accordance with law. Letters Patent Appeal is disposed of in the aforestated terms.

In view of the above, both the civil applications are also disposed of.

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